ARTHUR H. FARTHING

IBLA 94-812 Decided November 5, 1997

Appeal from a decision by the California State Office, Bureau of Land Management, declaring six lode mining claims abandoned and void for failure to pay annual rental fees for the 1993 and 1994 assessment years or obtain a small miner exemption by August 31, 1993. CAMC 164534, CAMC 164536, CAMC 164537, and CAMC 164539 through CAMC 164541.

Affirmed.

1. Mining Claims: Rental or Claim Maintenance Fees: Small Miner Exemption

The rental fee required by the Department of the Interior and Related Agencies Appropriations Act for Fiscal 1993 was a reasonable condition on the retention of unpatented mining claims and application of the statute to find mining claims abandoned and void did not constitute a taking of the claims.

APPEARANCES: Arthur H. Farthing, Tempe, Arizona, pro se.

OPINION BY ADMINISTRATIVE JUDGE IRWIN

Arthur H. Farthing has appealed a Decision by the California State Office, Bureau of Land Management (BLM), dated July 20, 1994, declaring the Delores #2 (CAMC 164534), the Delores #4 and #5 (CAMC 16536 and CAMC 164537), and the Delores #7 through #9 (CAMC through CAMC 164541) lode mining claims abandoned and void for failure to pay annual rental fees of $100 per year for the 1993 and 1994 assessment years or obtain a small miner exemption by August 31, 1993, as required by the Department of the Interior and Related Agencies Appropriations Act for Fiscal 1993, Pub. L. No. 102-381, 106 Stat. 1374 (1992). 1/

Appellant states that his nine Delores claims were located on January 26, 1985, and April 9, 1985, and that, in compliance with the

1/ The BLM also sent the Decision to Lonnie W. Olson of Rescue, California, because its records showed him to hold an interest in the Delores #9. On Sept. 22, 1994, BLM received and forwarded to the Board a copy of a quitclaim deed showing transfer of the Delores #9 from Olson to Appellant on Nov. 16, 1987.

mining laws, he filed a proof of labor with El Dorado County in 1993. He argues that changes in the mining laws should not govern mining claims located prior to their enactment and that applying a subsequently enacted statute unconstitutionally changes a vested right or contract.

The record before the Board shows that on April 9, 1993, Appellant filed with the California State Office a copy of his affidavit of assessment work, a plan of operations for the Delores #1, #3, and #6, a 1985 letter of acknowledgement from the Folsom Resource Area, and a handwritten "Claim for Exemptions for Small Miner Development of Mining Claims." By letter dated May 20, 1993, BLM sent him a copy of the proposed regulations which had been published in the Federal Register on March 5, 1993.

On July 15, 1993, Appellant filed a certificate of exemption for the Delores #1 through #9. The six claims addressed by BLM's July 20, 1994, Decision have lines through them and handwritten notes state: "not covered by Plan according to BLM statements," and "BLM says claims lined out will be considered abandoned Sept. 1, 93." The notes are initialed "A.H.F." Under cover letter dated June 6, 1994, BLM returned the document to him because he had "eliminated the Delores #2 through #9 lode mining claims (CAMC 164534-41) by crossing out the names of the claims on the exemption form because the subject claims were not covered by either a Notice or an approved Plan of Operations" and to allow him "to include the additional information." The BLM also pointed out that Appellant had filed only one form for the 1993 and 1994 assessment years and requested that he submit a separate form for the 1994 assessment year. Appellant responded by resubmitting the form and a copy with the exemption years corrected, a copy of the exemption he had filed on April 9, 1993. His cover letter explained that he had "filed two forms filled out on July 14, 1993," and that BLM had "lined out 6 of the nine claims on one of the copies."

The Department of the Interior and Related Agencies Appropriations Act for Fiscal 1993, Pub. L. No. 102-381, 106 Stat. 1374, 1378 (1992), required that

> for each unpatented mining claim, mill or tunnel site on federally owned lands, in lieu of the assessment work requirements contained in the Mining Law of 1872 (30 U.S.C. 28-28e), and the filing requirements contained in section 314 (a) and (c) of the Federal Land Policy and Management Act of 1976 (FLPMA) (43 U.S.C. 1744 (a) and (c)), each claimant shall, except as provided otherwise by this Act, pay a claim rental fee of $100 to the Secretary of the Interior or his designee on or before August 31, 1993 in order for the claimant to hold such unpatented mining claim, mill or tunnel site for the assessment year ending at noon on September 1, 1993 * * *.

A substantially identical provision required mineral claimants to also pay by August 31, 1993, a $100 rental fee to hold an unpatented mining claim, mill or tunnel site during the assessment year beginning September 1, 1993. Id. The legislation further provided that "failure to make the annual payment of the claim rental fee as required by this Act shall conclusively constitute an abandonment of the unpatented mining claim, mill or tunnel site by the claimant * * *." Id. at 1379.

The Act, however, created an exemption for a mineral claimant with 10 or fewer claims who is either producing under a valid notice or plan of operations not less than $1,500 and not more than $800,000 in gross revenues per year or is "performing exploration work to disclose, expose, or otherwise make known possible valuable mineralization * * * under a valid notice or plan of operation" and has fewer than 10 acres of unreclaimed surface. Id. at 1378. Such a claimant could "elect to either pay the claim rental fee for such year or in lieu thereof do assessment work required by the Mining Law of 1872," meet the requirements of 43 U.S.C. §§ 1744(a) and (c) (1994), "and certify the performance of such assessment work to the Secretary by August 31, 1993." Id.

[1] The record shows that Appellant did not pay the rental fees required by the Appropriations Act but did file for a small miner exemption. Although there is disagreement as to whether Appellant or BLM crossed out six of the claims listed on the exemption form, the matter is not determinative. The plan of operations Appellant submitted on April 9, 1993, pertains to only the Delores #1, #3, and #6. Consequently, even disregarding the deletions, Appellant did not qualify for an exemption for the Delores #2, #4, #5, and #7 through #9. See 43 C.F.R. § 3833.1-7(d) (1993).

An argument similar to Appellant's assertion that the statute does not apply to his vested rights was rejected by the court in Kunkes v. United States, 78 F.3d 1549 (Fed. Cir. 1996), aff'g 32 Fed. Cl. 249 (Fed. Cl. 1994). The appeals court upheld the lower court's application of United States v. Locke, 471 U.S. 84 (1985), and Texaco, Inc. v. Short, 454 U.S. 516 (1982), to find that the fee was a reasonable condition on the retention of unpatented mining claims and application of the statute to find mining claims abandoned and void did not constitute a taking of the claims.

The BLM correctly determined that the six mining claims became abandoned and void for failure to pay the claim rental fees or obtain a small miner exemption. Daniel D. Dooley, 138 IBLA 352 (1997).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, the July 20, 1994, Decision of the California State Office is affirmed.

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Will A. Irwin
Administrative Judge

I concur:

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John H. Kelly
Administrative Judge